IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.442 OF 2005

Dadabhau Sakharam Dhobale & Ors. ...Appellants
vs.
Maruti Rakhamaji Dhobale & Ors. ...Respondents

Mr.P.R.Arjunwadkar for the Appellants
Mr.G.M.Khambete for Respondent Nos.1 to 6.

CORAM: A.S.OKA,J.
DATE : DECEMBER 19,2007.

P.C.:

1. Heard Advocate for the Appellants. The Appellants are the original defendants. A suit filed by the Respondents-plaintiffs for partition and separate possession has been decreed by the trial court and the decree has been confirmed in the Appeal.

2. The submission of the learned Advocate for the Appellants is that the Respondents-plaintiffs have come to the court with a case that the other properties except the suit property were partitioned 70 years prior to the date of filing the suit and only the suit property was not partitioned. He pointed out that a specific case of the Appellants was that the suit property was allotted to the share of the Appellants under the said partition. He submitted that the evidence of the second plaintiff examined on behalf of the plaintiffs shows that he had no personal knowledge of the partition allegedly effected before 70 years. He, therefore, submitted that the case of

the Appellants ought to have been accepted by the trial court. He submitted that in the plaint itself there is an admission that the Respondents-plaintiffs had agreed to purchase a part of the suit property from the predecessor of the Appellants and in fact there is a mutation entry on record which refers to the execution of the such agreement. Thirdly, he submitted that now the suit property cannot be partitioned as the same has been included in a beneficial zone.

3. I have considered the submissions. The last contention cannot be considered as the same is not raised by the Appellants either in the courts below or in this Second Appeal. So far as the second contention is concerned, in the plaint the Respondents have not admitted the execution of any such agreement for sale. In fact, the Respondents have referred to mutation entry No.174 made by the Village Officer and have alleged that the Village Officer mischievously referred to an agreement for sale and the contents of the said mutation entry are incorrect.

4. It is pertinent to note that the second plaintiff entered the witness box and even a suggestion was not given to the said plaintiff to the effect that any such agreement was executed. The agreement is not placed on record. In the circumstances, only on the basis of the mutation entry, it cannot be inferred that there was any such agreement for sale.

5. In so far as the first submission regarding partition is concerned, the burden was on the Appellants to show that the suit property was also a subject matter of the partition effected in the year 1970. The courts below after examining the evidence on record held that the suit property was not partitioned. At the relevant time it was a Vatan land and the same became available for partition after the abolition of Vatan.

6. In view of the concurrent findings of fact recorded by the courts below, Second Appeal is dismissed with no order as to costs.

JUDGE